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January 11, 2022

Submitted via Email and read receipt requested

The Honorable Michael Regan  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
[Regan.Michael@Epa.gov](mailto:Regan.Michael@Epa.gov)

**RE: IMMINENT AND SUBSTANTIAL ENDANGERMENT TO EAST HAMPTON,  
NEW YORK DRINKING WATER FROM SOUTH FORK WIND FARM –  
POTENTIAL PFAS EXPOSURE**

Dear Administrator Regan:

We write with respect to the South Fork Wind Farm (SFWF), located in eastern Long Island, New York. This offshore project will include 12 wind turbine generators, submarine cables, an offshore substation, an alternative current (AC) electric cable and interconnection facility that connects the SFWF to the existing mainland electric grid in East Hampton, New York.<sup>1</sup> We are specifically concerned about the public health and environmental impacts potentially resulting from placing the landing site for a 138-kilovolt AC transmission cable on a residential road and adjacent to two Superfund sites where groundwater is known to be contaminated in the hamlet of Wainscott in the Town of East Hampton, New York.

Unless you and your agency intervene and exercise the legal authority you possess, construction of the landing site and cable installation will commence in short order, meaning the residents of East Hampton will be subject to potentially serious health risks from contamination from per- and polyfluoroalkyl substances (PFAS), including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), among others.

The Citizens for the Preservation of Wainscott (CPW) fully support renewable energy and New York State's commitment to increase renewable energy development to address the important issue of climate change. Our serious concern arises from SFWF's reckless and unprecedented proposal to construct a high-voltage transmission line, connecting electricity generated from

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<sup>1</sup> South Fork Wind Farm and South Fork Export Cable Project: Final Environmental Impact Statement, BOEM 2020-057, Bureau of Ocean Management, U.S. Department of the Interior (Aug. 2021), at 1-1, *available at* <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/SFWF%20FEIS.pdf>.

offshore wind turbines to an onshore substation, directly through a residential community and adjacent to two state Superfund sites. The proposal is especially disconcerting considering CPW has proposed viable alternative routes that will avoid residential areas and groundwater contamination while protecting against any potential environmental and public health risks from the spread of PFAS.

These significant issues are not limited to federal permits. We have raised similar concerns about state approvals that were issued without due attention given to serious environmental and public health issues, including contamination from PFAS associated with SFWF's construction activities. Unfortunately, those concerns were ignored. This forced our hand, as we have filed suit in New York State Appellate Court to stay construction until our concerns have been adequately addressed.<sup>2</sup>

From the start, through every step of a hurried process, the Town Board of East Hampton and the project developers, Ørsted and Eversource, have, with the acquiescence of federal and state officials, largely ignored or downplayed the presence of PFAS in the Town of East Hampton. They have seemed to just go through the motions in their examination as to whether construction of the transmission line will affect the disposition of PFAS in the local environment.

They did this notwithstanding the town's long, well-documented history of serious PFAS contamination. For example, in 2017, officials from the Suffolk County Department of Health tested private wells in the area and found levels of two specific types of PFAS, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), above the EPA's lifetime health advisory levels for both substances.<sup>3</sup> Town residents were offered bottled water as a precaution until the extent of the contamination was more fully understood.<sup>4</sup>

This disturbing situation should have been anticipated, given that the East Hampton Airport, which sits adjacent (within 50 feet) to the planned transmission cable corridor, has been designated by the state as a superfund site. For decades, the airport used aqueous film-forming foam (AFFF) for fire suppression.<sup>5</sup> PFOA and PFOS are components of AFFF.<sup>6</sup> In addition, the transmission line's construction pathway lies near the Wainscott Sand and Gravel Property, located just south of the airport, which also has elevated levels of PFAS in groundwater. The airport is a known source of PFOA and PFOS and this is the basis for its designation by New York State as a potential superfund site.

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<sup>2</sup> See *Citizens for the Preservation of Wainscott, Inc. v. N.Y.S. Pub. Serv. Comm'n et al.*, No. 2021-06582 (N.Y. 2d App. Div. filed Sept. 9, 2021); *Citizens for the Preservation of Wainscott, Inc. et al. v. Town Board of the Town of East Hampton et al.*, No. 601847/2021 (N.Y. Sup. Ct. Suffolk Cnty. filed Feb. 1, 2021).

<sup>3</sup> Contaminants Found in Drinking Water Near East Hampton Airport, Joanne Pilgrim, *The East Hampton Star* (Oct. 11, 2017), available at <https://www.easthamptonstar.com/archive/contaminants-found-drinking-water-near-east-hampton-airport>.

<sup>4</sup> Statement from the office of East Hampton Town Supervisor Peter Van Scoyoc (Aug. 3, 2020), available at <https://ehamptonny.gov/DocumentCenter/View/5187/Pr-Rel-Aug-2-Statement-from-Supervisor>.

<sup>5</sup> Christopher Walsh, "East Hampton Town Sues Village Over Firefighting Foam at Airport," April 23, 2020. Available at <https://www.easthamptonstar.com/government/2020423/east-hampton-town-sues-village-over-firefighting-foam-airport>.

<sup>6</sup> *Id.*

As testing of wells in the area has confirmed, PFOA and PFOS have migrated from the airport onto the gravel site and into the surrounding community.<sup>7</sup> Of particular concern is the fact that SFWF's high-voltage landing cable will run directly through and along these areas. Yet with approval from state and local officials, Ørsted and Eversource have repeatedly claimed, without evidence, that construction activities are unlikely to encounter PFAS—and even if they did, that their “we’ll deal with it when it’s a problem” mitigation plan is sufficient to safely address and remediate it.

But according to an affidavit filed by geologist John Conrad, SFWF’s “Environmental Management and Construction Plan” includes a monitoring proposal that lacks rigor and contains multiple gaps.<sup>8</sup> For example, Conrad noted “especially large gaps between monitoring wells along the transmission cable corridor in the Wainscott Sand and Gravel area (the ‘Gravel Pit’) where PFAS-contaminated groundwater is known to exist at shallow depths.”<sup>9</sup> He further noted that “the cable excavation is likely to extend into PFAS-contaminated groundwater known to exist at shallow depth on and near the Gravel Pit.”<sup>10</sup> (Notably, there are no known studies or analyses that show that SFWF’s construction actions *will likely not result* in PFOA and PFOS migration stemming from construction activities.)

In addition, Conrad concluded that “more work is needed to confirm whether the cable system will be in contact with PFAS-contaminated groundwater in the known PFAS plume area and along the entire route.”<sup>11</sup>

Finally, he conclusively demonstrates that SFWF’s wells and well testing as part of its compliance plan fail to meet requirements included in the easement it received from the Town of East Hampton, including installation of wells at 500-foot intervals to measure depth to groundwater and test groundwater samples for PFAS where groundwater is shallow.<sup>12</sup> Conrad noted that, as part of the easement, these actions are to be taken *120 days prior to construction*.<sup>13</sup> “As of the date of the filing of this affidavit [January 3, 2022],” Conrad testified, SFWF “has not satisfied these conditions.”<sup>14</sup>

Our concerns were only reinforced when your agency, on November 16, 2021, transmitted to the EPA Science Advisory Board four draft documents with, as EPA reported, “recent scientific data and new analyses that indicate that negative health effects may occur at much lower levels of exposure to PFOA and PFOS than previously understood.” These new analyses also indicate to EPA that “PFOA is a likely carcinogen.”<sup>15</sup>

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<sup>7</sup> Kathryn Menu. Sagharbor.com. “Health Department Expands Water Quality Testing in Wainscott.” May 30, 2018. Available at <https://sagharborexpress.com/health-department-expands-water-quality-testing-wainscott/>.

<sup>8</sup> See generally Reply Affidavit of John A. Conrad, attached to Petitioner’s Reply Memorandum of Law in Further Support of Motion for Stay Pending Appeal, *Citizens for the Preservation of Wainscott, Inc. v. N.Y.S. Pub. Serv. Comm’n et al.*, No. 2021-06582 (N.Y. 2d App. Div. filed Jan. 3, 2022) (Conrad Affidavit).

<sup>9</sup> *Id.* at ¶ 14.

<sup>10</sup> *Id.* at ¶ 18.

<sup>11</sup> *Id.* at ¶ 19.

<sup>12</sup> See *id.* at ¶¶ 3, 12, 14.

<sup>13</sup> *Id.* at ¶ 20.

<sup>14</sup> *Id.*

<sup>15</sup> EPA Advances Science to Protect the Public from PFOA and PFOS in Drinking Water (Nov. 16, 2021), available at <https://www.epa.gov/newsreleases/epa-advances-science-protect-public-pfoa-and-pfos-drinking-water>.

Based on the foregoing, SFWF's construction activities create an ***imminent and substantial endangerment*** to the public health of the citizens of East Hampton.

Given the troubling history of PFAS contamination in our area, and SFWF's abject lack of concern or appropriate level of rigor in addressing PFAS along the transmission construction corridor prior to construction, we urge you to intervene immediately to stop construction. EPA has authority to do so under Section 1431 of the Safe Drinking Water Act. EPA must stop SFWF's construction activities of the transmission cable until the following actions are taken:

- 1. EPA investigates to determine the nature and extent of potential contamination in the environment**
- 2. EPA establishes a monitoring plan with robust enforcement provisions for any potential construction**

**I. EPA HAS THE STATUTORY AUTHORITY TO TAKE ACTION ON PFAS IN SUFFOLK COUNTY**

Section 1431 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300i, provides EPA with broad powers to take appropriate actions to prevent an "impending dangerous condition from materializing, or to reduce or eliminate a dangerous situation once it has been discovered." Preventing the impending construction by SFWF is well within EPA's statutory authority under SDWA.

On May 30, 2018, EPA published guidance to assist the agency with implementing emergency authority under Section 1431 of SDWA.<sup>16</sup> We have followed the framework provided within that guidance to show why EPA must act. The guidance states that Section 1431 orders from EPA "should ideally be issued early enough to *prevent* the potential hazard for materializing" and, accordingly, EPA should not wait until after construction to act<sup>17</sup> (Emphasis in original.) EPA must act, as the SFWF construction activities meet the requirements described in further detail below under Section 1431 of SDWA:

- PFAS, specifically PFOA and PFOS, is potentially hazardous and is already present in Wainscott
- SFWF construction activity may result in PFAS exposure in significant levels in residents' drinking water
- SFWF construction activity is an imminent and substantial endangerment to the public health of the local citizens, and
- New York and Suffolk County officials are not taking the appropriate action, thus requiring EPA to intervene.

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<sup>16</sup> Updated Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act, U.S. Environmental Protection Agency, (May 30, 2018), *available at* [https://www.epa.gov/sites/default/files/2019-10/documents/wsg\\_210\\_updated\\_guidance\\_on\\_emergency\\_authority\\_under\\_sdwa\\_section\\_1431\\_5\\_30\\_2018508.pdf](https://www.epa.gov/sites/default/files/2019-10/documents/wsg_210_updated_guidance_on_emergency_authority_under_sdwa_section_1431_5_30_2018508.pdf) (EPA Updated Guidance).

<sup>17</sup> *Id.* at 7.

## **II. EPA HAS ACKNOWLEDGED THAT PFAS IS A SIGNIFICANT NATIONAL ISSUE AND ENDANGERS THE PUBLIC**

EPA has expressed significant concern about the dangers PFAS pose to public health and is taking several actions to address them.

- In October, EPA issued a PFAS Strategic Roadmap.<sup>18</sup> The Roadmap states that PFAS “are an urgent public health and environmental issue” and that EPA’s integrated approach to PFAS is focused on three central directives including pursuing “a comprehensive approach to proactively prevent PFAS from entering air, land, and water at levels that can adversely impact human health and the environment.”<sup>19</sup>
- EPA states that they plan to finalize a risk assessment of PFOA and PFOS in November 2024 to determine the potential harm associated with human exposure to chemicals
- EPA is planning to develop regulations, and to finalize them “in the spring of 2022,” to determine PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability (CERCLA or Superfund Act).<sup>20</sup>
- In December, EPA granted a petition from several environmental groups to require testing of PFAS chemicals in North Carolina due to the potential harm to local communities.<sup>21</sup>

The foregoing information, and other information developed by federal and state governments, clearly indicate that PFAS, especially PFOA and PFOS, endanger public health and environment and must be prevented from spreading in Wainscott. Significant additional testing is required before the start of any construction of SFWF’s transmission line.

## **III. THERE IS A HISTORY OF HARMFUL PFAS EXPOSURE IN SUFFOLK COUNTY**

As noted above, there is already a history of PFAS exposure in the Town of East Hampton. In fall 2017, the New York State Department of Environmental Conservation (NYSDEC) provided initial findings of PFOA and PFOS in over 258 home wells in Westhampton and Wainscott and urged residents to have their wells tested.<sup>22</sup> In response to those tests, the Suffolk County Water Authority extended public water mains through the area and provided \$3,000 grants to residents

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<sup>18</sup> PFAS Strategic Roadmap: EPA’s Commitments to Action 2021 – 2024, U.S. Environmental Protection Agency (Oct. 2021), EPA-100-K-21-002, *available at* [https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap\\_final-508.pdf](https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf).

<sup>19</sup> *Id.* at 5.

<sup>20</sup> *Id.* at 13.

<sup>21</sup> Letter Granting Petition, from Michal Freedhoff, Ph.D., Assistant Administrator, Office of Chemical Safety and Pollution Prevention, U.S. Environmental Protection Agency, to Robert M. Sussman, Sussman and Associates (Dec. 28, 2021), *available at* <https://www.epa.gov/system/files/documents/2021-12/pfaspetitionresponse.pdf>.

<sup>22</sup> Earth Matters: Cleanup slow for Long Island’s superfund sites, Francine Furtado, *The Island Now* (May 24, 2019), *available at* <https://theislandnow.com/blog-112/earth-matters-cleanup-slow-for-long-islands-superfund-sites/>

whose wells were contaminated with PFAS.<sup>23</sup> These procedures cost the county over \$7.7 million.<sup>24</sup>

Also, as part of the PFAS testing and review process, in June 2019, NYSDEC declared the East Hampton Airport, located in Wainscott, a state superfund site under the Inactive Hazardous Waste Disposal Site Program (State Superfund Program).<sup>25</sup> The East Hampton Airport was designated a state Superfund site due to fire-fighting foam containing PFAS – including PFOA and PFOS – being used and stored in East Hampton Airport during crash response and training. In response to that superfund designation, Suffolk County and the Town of East Hampton have begun mitigating PFAS exposures through various measures. The Town of East Hampton has filed a lawsuit against the East Hampton Fire Department and states that the costs of cleanup are expected to be in the tens of millions of dollars.<sup>26</sup>

In 2019, NYSDEC designated the Wainscott Sand and Gravel Property as a potential Superfund site due to sampling that showed PFAS at levels greater than those deemed safe by the state of New York.<sup>27</sup>

#### **IV. SFWF CONSTRUCTION COULD RESULT IN ADDITIONAL PFAS ENTERING THE DRINKING WATER AQUIFER**

The proposed SFWF proposed high-voltage cable consists of three segments within New York: (1) a 3.5-mile submarine segment of cable running through New York State territorial waters; (2) a 4.1-mile underground segment of cable running through East Hampton (almost entirely through Wainscott); and (3) a new substation to connect the high-voltage cable to the existing East Hampton substation.<sup>28</sup>

The high-voltage cable would entail thousands of feet of directional drilling, high-decibel noise, diesel fumes, miles of trenching for installation of a concrete encased duct bank system, splice boxes and manholes, cable pulling into the duct system, splicing together of cable segments, and complex logistics and methods.<sup>29</sup>

The trenching will be adjacent to the Gravel Pit, just south of the East Hampton Airport, which is currently contaminated with PFAS. Installation of the high-voltage cable in this area will entail excavating within the PFAS contaminant plume that is known to present in shallow groundwater in the area. The excavations and cable installations could become a pathway for movement of

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<sup>23</sup> Parts of East Hampton Airport added to State Superfund Registry, Christopher Walsh, *The East Hampton Star* (June 5, 2019), available at <https://www.easthamptonstar.com/top-news-government/201966/east-hampton-airport-added-state-superfund-registry>.

<sup>24</sup> PFAS Lawsuit Shows Pandemic Is Not Stopping Contamination Claims, Jessica Deyoe, CMBG3 Law (Apr. 20, 2020), available at <https://www.cmbg3.com/pfas-lawsuit-ny>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> DEC's Assessment of the Wainscott Sand and Gravel Property, Nicholas C. Rigano, Rigano LLC, available at <https://ehamptonny.gov/DocumentCenter/View/5914/DEC-site-characterization-presentation-PDF>.

<sup>28</sup> Verified Petition and Complaint at 15, *Citizens for the Preservation of Wainscott, Inc. et al. v. Town Board of the Town of East Hampton et al.*, No. 601847/2021 (N.Y. Sup. Ct. Suffolk Cnty. filed Feb. 1, 2021), Doc. No. 1.

<sup>29</sup> *Id.* at 21.

PFAS-contaminated groundwater causing other areas – including residential water wells – to be contaminated or further contaminated.<sup>30</sup>

SFWF has conceded that: (1) PFAS is dangerous to (i.e., endangers) public health and the environment; (2) PFAS contamination near the East Hampton Airport can move laterally with groundwater and such contamination would most likely be encountered via migration of groundwater towards the project; and (3) PFAS contamination at the Gravel Pit site south of the East Hampton Airport along SFW’s proposed land route.<sup>31</sup> Indeed, the route for the high-voltage transmission cable crosses a known PFAS plume where the water table may be shallow enough for the cable excavation to intersect contaminated groundwater.<sup>32</sup>

The planned project also travels directly adjacent (e.g., within 50 feet) of the East Hampton Airport and will almost certainly encounter PFAS contamination that has migrated from the airport.<sup>33</sup> Therefore, this project has the potential to increasing PFAS exposure in the Town of East Hampton.

## **V. THERE IS AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO PUBLIC HEALTH FROM PFAS EXPOSURE**

The purposes of a Section 1431 action, according to EPA, are to “prevent an impending dangerous condition from materializing, or to reduce or eliminate a dangerous situation once it has been discovered.”<sup>34</sup> Section 1431 focuses on “imminent and substantial endangerment,” which EPA states is a “broadly defined concept.” For example, EPA explained that “one major function of Section 1431 is its use as a preventative enforcement measure.”<sup>35</sup>

### *A. Imminent endangerment*

The SFWF construction activities are “imminent” in that the activities will increase the potential of PFAS exposure in the community, thus meeting EPA’s guidance on the meaning of “imminent.” According to EPA’s guidance, a hazard may be deemed imminent “at any point in a chain of events that may ultimately result in harm to the public.”<sup>36</sup> Moreover, an endangerment is imminent “if conditions which give rise to it are present, even though the actual harm may not be realized for years.”<sup>37</sup>

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<sup>30</sup> *Id.* at 24-25.

<sup>31</sup> *See id.* at 30-31.

<sup>32</sup> Petitioner’s Reply Memorandum of Law in Further Support of Motion for Stay Pending Appeal at 14, *Citizens for the Preservation of Wainscott, Inc. v. N.Y.S. Pub. Serv. Comm’n et al.*, No. 2021-06582 (N.Y. 2d App. Div. filed Jan. 3, 2022).

<sup>33</sup> *Id.* at 13. *See also* Conrad Affidavit, *supra* n.8, at ¶¶ 3 (“SFW has not properly accounted for the very real possibility that known PFAS contaminants will be encountered during construction along its preferred Beach Lane route.”) (footnote omitted), 18 (“[T]he cable excavation is likely to extend into PFAS-contaminated groundwater known to exist at shallow depth on and near the Gravel Pit . . .”).

<sup>34</sup> EPA Updated Guidance, *supra* n.16, at 4.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 8.

<sup>37</sup> *Id.*

Importantly, EPA’s guidance states that “contaminants that lead to chronic health effects, such as carcinogens, also may be considered to cause ‘imminent endangerment’” even though “there is a period of latency before those contaminants, if introduced into a drinking water supply, might cause adverse health effects.”<sup>38</sup> EPA’s guidance cites as an example an “exposure, or threat of exposure, to chronic contaminants at levels exceeding their MCLs or health advisory levels (e.g., PFOA).”<sup>39</sup> (Emphasis added.)

Given the existence in Wainscott of PFOA and PFOS above EPA’s health advisory levels,<sup>40</sup> *EPA is entirely within its legal authority under SDWA—and, one could reasonably argue, is legally obligated—to block any construction activities by SFWF before the agency can conduct proper testing and monitoring.*

SFWF may argue that the harms are “speculative” (as they have in court). But that flawed characterization stems from SFWF’s, and New York State’s, refusal to complete the testing and monitoring necessary to understand the nature of PFAS contamination and how construction would affect the surrounding community. SFWF has conceded the risks from their project with PFAS but have – without any substantiation – stated that there are no real risks from the project.<sup>41</sup> At a minimum we ask that the developer complete the routine and mandatory monitoring and testing that it is required to do before commencement of construction.

#### *B. Substantial endangerment*

PFAS, specifically PFOA and PFOS, meet the standards as an existing or threatened hazard. According to EPA’s guidance, no actual reports of human illness are necessary to meet the “substantial endangerment” threshold and only requires “a reasonable cause of concern that someone may be exposed to a risk of harm.”<sup>42</sup> As stated above, EPA has stated publicly that PFAS is a reasonable cause of concern throughout the United States and requires more investigation and regulation. With respect to Wainscott, local authorities have already found levels of PFOA and PFOS above the MCLs allowed under EPA’s requirements.<sup>43</sup>

SFWF construction’s pathway in the midst of PFAS contamination clearly meets the “substantial endangerment” standard required for EPA to take emergency action under SDWA. The only time that the endangerment would *not* be considered substantial is if the risk of harm were completely speculative in nature or *de minimis*.<sup>44</sup> However, it is well known that there are PFAS chemicals

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<sup>38</sup> *Id.* at 9.

<sup>39</sup> *Id.* at 10.

<sup>40</sup> See Water Quality Advisory for Private-Well Owners in Area of Wainscott, Suffolk County Government (Oct. 11, 2017), available at <https://www.suffolkcountyny.gov/News/water-quality-advisory-for-private-well-owners-in-area-of-wainscott>.

<sup>41</sup> Petitioner’s Reply Memorandum of Law in Further Support of Motion for Stay Pending Appeal, at 12-13, *Citizens for the Preservation of Wainscott, Inc. v. N.Y.S. Pub. Serv. Comm’n et al.*, No. 2021-06582 (N.Y. 2d App. Div. filed Jan. 3, 2022).

<sup>42</sup> EPA Updated Guidance, *supra* n.16, at 11.

<sup>43</sup> See *supra* n.40.

<sup>44</sup> *Id.*



already in the area; it is not speculative to contend that construction activity could potentially result in PFAS exposure to residents in the community.<sup>45</sup>

## **VI. STATE AND LOCAL AUTHORITIES HAVE NOT TAKEN APPROPRIATE ACTION**

The analysis and actions around the SFWF epitomize elevating climate change concerns—entirely legitimate and important as they are—over environmental issues such as clean water and clean air. We must not cut corners on critical clean water protections and process as a means to achieve laudable climate change goals.

On August 26, 2020, NYSDEC adopted drinking water standards for public water systems that set maximum containment levels (MCLs) of 10 parts per million (ppt) for PFOA and PFOS – thus acknowledging the significant hazard related to PFOA and PFOS.<sup>46</sup>

SFWF has claimed that there are multiple conditions that they have agreed to as part of their construction plan to minimize potential PFAS exposures.<sup>47</sup> Yet one cannot trust SFWF’s commitments, given that they have made misrepresentations or failed to follow through on their promises. For example, they represented that they were legally required to obtain an easement before seeking state and federal approvals, but that turned out to be false. They committed to CPW that they would explore alternative landing sites to Beach Lane,<sup>48</sup> and failed to do so. Assemblyman Fred Thiele, Jr. (District 1) anticipated SFWF’s tactics when he wrote, “Because of the bait and switch tactics of Deepwater/Ørsted, I cannot trust them with my community’s future. Local government should also consider these unethical tactics before it makes any more decisions about this project.”<sup>49</sup>

Neither SFWF, NYSDEC, East Hampton, nor Suffolk County officials has clarified or explained what testing or mitigation each has done consistent with their requirements. New York and Suffolk County have been silent on any tests of PFAS from construction activity, while the Suffolk County Water Authority has stated that all the necessary water treatment systems to protect against PFAS will not be completed until August 2022.<sup>50</sup>

While Suffolk County Water Authority has taken steps to mitigate some of the other PFAS issues within Suffolk County, neither it nor the state has taken appropriate action to stop this

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<sup>45</sup> See *supra* n.33.

<sup>46</sup> Public Water Systems and NYS Drinking Water Standards for PFOA, PFOS, and 1,4-Dioxane, New York State Department of Health (Sept. 2020), *available at* [https://www.health.ny.gov/environmental/water/drinking/docs/water\\_supplier\\_fact\\_sheet\\_new\\_mcls.pdf](https://www.health.ny.gov/environmental/water/drinking/docs/water_supplier_fact_sheet_new_mcls.pdf).

<sup>47</sup> Petitioner’s Reply Memorandum of Law in Further Support of Motion for Stay Pending Appeal, at 13, *Citizens for the Preservation of Wainscott, Inc. v. N.Y.S. Pub. Serv. Comm’n et al.*, No. 2021-06582 (N.Y. 2d App. Div. filed Jan. 3, 2022).

<sup>48</sup> Letter from Thomas Broström, CEO, Ørsted US Offshore Wind, to Citizens for the Preservation of Wainscott (May 31, 2019).

<sup>49</sup> Statement from Assemblyman Fred W. Thiele, Jr. to the Town of East Hampton Regarding the Deepwater Wind Project (Jan. 24, 2019), *available at* <https://nyassembly.gov/mem/Fred-W-Thiele-Jr/story/84596>.

<sup>50</sup> Emerging Contaminants, Jeffrey Szabo, CEO, Suffolk County Water Authority, *available at* <https://www.scwa.com/emerging-contaminants/>.

known threat to the people of East Hampton.<sup>51</sup> Similarly, we have no assurance that the Town of East Hampton has held SFWF to its obligations to conduct testing as required under the terms of the easement it granted to SFWF.

## **VII. POTENTIAL SUPERFUND LIABILITY AND RELATED CONCERNS**

While not directly related to the emergency authority request under SDWA, as stated above, we also have serious concerns related to the significant potential for liability related to the East Hampton Airport superfund site. The Town of East Hampton has already been exposed to significant environmental damage and is currently liable for tens of millions of dollars in cleanup expenses.

If the SFWF project results in increased exposure of PFAS, the Town of East Hampton – although they are not responsible for that release – are liable for the environmental damage and costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) joint and several and strict liability provisions.<sup>52</sup>

Not only are we concerned about the health, environmental, and economic damage to ourselves, but Ørsted and Eversource are also potentially exposed to the full superfund cleanup costs from their project. However, our review of official public statements to the U.S. Securities and Exchange Commission (SEC) and Ørsted and Eversource's respective websites do not include any information about this significant potential liability from the SFWF project. We are thus concerned that these multibillion-dollar companies will subject our county and its citizens to protracted litigation to avoid any responsibility for future cleanup costs.

Thank you for your consideration,



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<sup>51</sup> SCWA, Town of East Hampton, Announce Completion of Wainscott Water Main Installation, Suffolk County Water Authority (Dec. 21, 2018), *available at* [https://www.scwa.com/scwa\\_town\\_of\\_east\\_hampton\\_announce\\_completion\\_of\\_wainscott\\_water\\_main\\_installation/](https://www.scwa.com/scwa_town_of_east_hampton_announce_completion_of_wainscott_water_main_installation/).

<sup>52</sup> Superfund Liability, U.S. Environmental Protection Agency, *available at* <https://www.epa.gov/enforcement/superfund-liability>.

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